

2021 West Virginia Health Care Privacy Regulations and HIPAA Preemption Analysis

This chart provides an overview of the West Virginia health care privacy related regulations and an analysis of the preemption issues arising under the Privacy, Security, Breach Notification, and Enforcement Rules (45 C.F.R Parts 160, 162, and 164) of the Health Insurance Portability and Accountability Act of 1996, as amended by and including the regulations issued by the Department of Health and Human Services by the Health Information Technology for Economic and Clinical Health Act, Subtitle D- Privacy (§§ 13400 – 13424) (HIPAA). To assist healthcare providers and other entities in the complicated task of determining whether West Virginia state regulations have been preempted by HIPAA. This legal advisory chart was a new addition to the 2014 preemption analysis of applicable West Virginia state law provisions which appear to implicate HIPAA; therefore this chart will be updated with applicable West Virginia state regulations on a going forward basis as they are implemented by the legislature. Please note that this is not a comprehensive list of all applicable West Virginia regulations which may implicate a HIPAA analysis.

This survey is in a matrix consisting of seven columns. The first column is a general reference to the subject matter of the regulation. The second column is the specific West Virginia Code of State Rules citation or citations, which include embedded links to the complete regulatory language located on the West Virginia Secretary of State's website. The third column discusses the impact of each state regulation upon the privacy or security of protected health information as defined in HIPAA. In the fourth column is the corresponding HIPAA citation. The fifth column states whether HIPAA has preempted this state regulation. If the answer is yes, the extent to which the state regulation is preempted is sometimes described in the "Comments" column, along with other general comments regarding the law. The sixth column indicates whether the state regulation is more stringent or more detailed or whether HIPAA is more stringent or more detailed.

Covered entities, as defined under HIPAA, should generally follow the law that is more stringent, but may have to comply with both laws in some cases. Where the remark is "Both" in the sixth column, the comments describe which part of the state regulation is more stringent or detailed, or which part of HIPAA is more stringent. Finally, the last column provides any commentary relevant to this analysis of the state regulation. However, the assessment of whether a state regulation is preempted or not is only an educational guide and resource, and any final determination on whether such state regulation is preempted would have to be the result of court action or decision. Those using the assessment are encouraged to seek legal advice concerning how the various laws and regulations may impact their own particular facts and circumstances.

This preemption analysis chart is a working document that is subject to review and revision. All individuals and entities that review this document are encouraged to provide feedback and omitted regulations to the Chief Privacy Officer for the West Virginia State Privacy Office at: stateprivacyoffice@wv.gov

In addition to the preemption chart below, other useful information and links related to HIPAA and health care privacy and security can be found at the following:

1. West Virginia State Privacy Office: <http://www.privacy.wv.gov>
2. U.S. Department of Health and Human Services (HHS), Office for Civil Rights, Health Information Privacy: <http://www.hhs.gov/ocr/privacy/index.html>
3. The Office of the National Coordinator for Health Information Technology: <http://www.healthit.gov/providers-professionals/ehr-privacy-security>

There are a number of regulations that have been suspended as a response to the COVID-19 Crisis. The list is continually updated, and additional regulations have been suspending during 2021. The full list of suspended regulations may be found at: <https://sos.wv.gov/admin-law/Pages/SuspendRules.aspx>

Last Updated by Pullin, Fowler, Flanagan, Brown & Poe, PLLC: September 1, 2021

SUBJECT	WV CSR	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
Behavioral Health Patient Rights Rule	§ 64-59-1 et seq. § 64-59-11	Establishes the rights of clients of state operated behavioral health facilities; also sets forth standards for the confidentiality of client records and the disclosure of client records in the following circumstances: 11.2.1(a) in a proceeding under W. Va. Code § 27-5-4 to disclose the results of an involuntary examination made pursuant to W. Va. Code § 27-5-2 or W. Va. Code § 27-5-3; (b) in a proceeding under W. Va. Code § 27-6A-1, <i>et seq.</i> to disclose the results of an involuntary examination made pursuant thereto; (c) pursuant to an order of any court; (d) to protect against a clear and substantial danger of imminent injury by a client to himself or herself or another; and (e) for treatment or internal review purposes to staff of the behavioral health facility.	164.512(a), (c)	No	State Law	2021 updates modify definitions and standards, and many of these changes are to be consistent with federal regulations. Requires confidentiality be treated in accordance with 42 C.F.R. 482.13. Identifies types of confidential information. Requires a Health Information Management department maintain records in accordance with 42 C.F.R. 482.24 and State Operations Manual published by CMS. Changes include changes to clinical policies and procedures.
Health Information Network-Uses and Disclosures	§ 65-28-1 et seq.	Permits access to network only to designated authorized users within participating organizations; identifies an inquiry by a participating organization for a permitted purpose or a point-to-point disclosure between two participating	164.506 164.508 164.510 164.512(a)-(k) 160.203(b)	No	Both	W. Va. Code § 16-29G-8 requires compliance with both state confidentiality laws and HIPAA.

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		organizations as the only two types of protected health information transactions; requires that either type of transaction designate the permissible purpose of the disclosure and use; forbids the Network from selling protected health information to third parties without authorization from the affected party; requires patients to be provided with the option to opt-out of the Network; even when opted out the Network will still disclose protected health information to state or federal agencies for public health reporting.				
State Board of Examiners for Licensed Practical Nurses	§ 10-2-14.2.e	When the Board reviews medical records during a complaint or investigation for licensing, all patient identifying information must be removed or redacted prior to introduction as evidence.	164.512(d)	No	Both	
State Board of Examiners or Speech-Language Pathology and Audiology Licensure and Disciplinary Procedures	§ 29-1-1 § 29-4-1	Prohibits individuals from revealing professional or personal information about the person served professionally; exceptions include when authorized by individual, when required to do so by law, or unless doing so is necessary to protect the welfare of the person or the community; mandates telepractice providers comply with all laws, rules, and regulations governing maintenance of patient/client	160.203 164.512(a), (b), (c)	No	Both	Rule requires compliance with both state confidentiality laws and HIPAA. Some provisions of the regulation are suspended due to the COVID-19 crisis.

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		records and confidentiality requirements. Investigations of complaints against practitioners includes the Board's ability to issue subpoenas for records for investigative purposes.				
Medical Examiner – Pronouncement, Investigation, Certification of Deaths, and Autopsy Reports	§ 64-84-8.2 § 64-84-19.2	Permits the Office of the Chief Medical Examiner and the County Medical Examiner to obtain and review medical records of the deceased to identify the body or when review of medical records may help determine the cause of death or answer material questions during an investigation; original medical records may not be incorporated into the medical examiner's file; copies of medical records may only become part of the file at the discretion of the prosecutor and may not be released upon any request or subpoena; copies not maintained in the final medical examiner file shall be returned to the original institution or destroyed at the time the case is closed; autopsy reports shall not include medical records of the deceased.	164.512(g)	No	Both	
Health Promotion and Disease Prevention	§ 64-7-6 § 126-51-4.23	Requires health care providers to report administration of vaccines through the West Virginia Statewide Immunization Information System (WVSIIS). All of the data in WVSIIS is confidential and exempt from	160.203(c) 164.512(a), (b)	No	State law	

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		disclosure except for limited disclosure related to the purpose of delivering medical or immunization services, investigating or managing an outbreak of a reportable disease, or determining if children enrolled in school have all required immunizations.				
Behavioral Health Centers Licensure	§ 64-11-1 et seq. § 64-11-4.6 § 64-11-7.5.9	These rules update the standards for operation and licensure of behavioral health facilities. Mandates policies for regulating access to records pursuant to state and federal requirements. Provides a required 5-year retention period. Creates certain recordkeeping requirements for medication administration. Provides that the records for the facility are accessible to inspectors for routine monitoring and complaint investigation, but requires such information be kept confidential.	164.512(a), (b)	No	State	2021 updates permit disclosure in accordance with written policies and in compliance with federal and state law. Requires patient consent for disclosure unless disclosure made as required by law. Identifies situations where patient does not need to consent to records. Requires appropriate record keeping system. Other code changes and reorganization. These rules update the standards for behavioral health services under WV Code §27-1A-7.
Fatality and	§ 64-29-7.4	Creates four Fatality and Mortality	160.203(c)	No	State law	

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Mortality Review Team	§ 64-29-14 § 64-29-15	Review Teams (FMRT) and related Review Panels. Requires all Review Panel members to sign a sworn statement promising to maintain the confidentiality of information, records, discussions, and opinions disclosed during reviews. Grants Review Panels the authority to call for an immediate review of medical records requested from physicians and hospitals treating the person whose death is under review. Requires health care providers to supply records for evaluation and review purposes only regarding the death of the person whose death is under review. Patient, hospital, and medical practitioner names are removed following nationally recommended guidelines and process to ensure confidentiality. No identifying information will be released in the annual report. All information, records, and opinions expressed by members are confidential and are not to be released or disclosed, not subject to discovery, subpoena, or introduction into evidence in any civil or criminal proceedings. Members of the FMRT and each of the Advisory Panels may not be questioned in any civil or criminal proceeding regarding information presented in or opinions	164.512(a), (b), (c), (f), (g)			

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		formed as a result of a meeting of the panel.				
Emergency Medical Services – Data System, Records, Personnel, and Investigative/ Disciplinary Action	§ 64-48-3.2 § 64-48-4.13 § 64-48-6.2.k § 64-48-7	Requires EMS agencies to collect, maintain, and report accurate patient data for all incidents and complete patient care report for all incidents, which shall be made available to the receiving facility following an ambulance transport. Requires secure storage for all medical records. Prohibits certified personnel from disclosing medical information regarding any patient without that patient’s consent, except that information required for continuation of treatment, for payment purposes or operations, including quality review investigations and training, or by mandate of a legally issued subpoena or lawful court order. Authorizes the Commissioner to initiate investigations to determine if disciplinary action is appropriate for (among other things) the improper disclosure of confidential patient information.	164.506 164.508 164.512(a), (b), (d), (e)	No	HIPAA	2021 changes do not change confidentiality provisions. Part of regulations remain suspended due to COVID-19 State of Emergency.
AIDS-Related Medical Testing and Confidentiality	§ 64-64-8 and 9 § 64-64-12 and 13	Victims of sexual crimes are eligible for HIV counseling and testing and all testing information is subject to the confidentiality requirements of	160.203(c) 164.506	No	State law	Permitted disclosures without authorization are largely in accord with HIPAA permitted

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		<p>W. Va. Code §16-3C-1 <i>et. seq.</i> Provides that agents or employees of a health facility have a need to know HIV results when the information is medically necessary to protect the individual from a significant risk of transmission or will impact the mode of treatment. Results may be disclosed to providers, emergency responders, or others who have been subject to significant exposure during the course of medical practice or in the performance of professional duties. Results may be disclosed to claims management personnel solely for the purpose of prompt and accurate evaluation and payment of medical or related claims. Results may be disclosed to facilitate health information exchanges, to legally authorized public health authorities, and to persons allowed to access the record by court order.</p> <p>Describes the information that should be provided to a sexual or needle-sharing partner of the HIV-infected person.</p> <p>Requires all health care providers and laboratories to report HIV infection associated laboratory tests that are positive or results that are</p>	<p>164.508</p> <p>164.512(a), (b), (c), (e), (g), (h), (i), (j)</p>			<p>uses.</p> <p>State law includes detailed requirements for certain disclosures and reporting.</p>

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		either indicative of or a progression toward the HIV infection.				
Tuberculosis – Reporting	§ 64-76-4 § 64-76-7 § 64-76-8 § 64-76-9	Requires any institution with a patient diagnosed or suspected of having tuberculosis to report that admission, death, discharge, or transfer to the Division of Tuberculosis Elimination. The institution must also make available to the Bureau for Public Health the patient-related records, reports, and other data pertaining to confirmed and suspected tuberculosis patients. The Division will maintain a registry of all verified tuberculosis cases. Authorizes the Bureau to release tuberculosis related information regarding a patient to allow for diagnosis, treatment, and monitoring care by the original reporting source and other health providers in charge of the patient's or a contact's (a person who was exposed by sharing air with the infected patient) care; to identify a specific patient to the Division of STD, HIV, Hepatitis, in the Bureau to compare registries to assist in case finding, and patient care; and to allow for diagnosis, treatment, and monitoring of care by tuberculosis control programs in other states for the patient who has relocated to another state and for the patient's contacts who live in	160.203(c) 164.506 164.512 (a), (b), (j)	No	State Law	

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		<p>another state and are under a health care provider's care.</p> <p>Requires health care providers, public health officers, and chief medical officers to immediately report by telephone to the local health department the name, age, sex, race, home, address, and type of disease of any person with a diagnosis of or suspected of having tuberculosis. The provider must also submit a written report to the local health department of the patient's county of residence within 24 hours of diagnosis, and must submit updates of the patient's progress and report any screening of contacts to the local health department.</p> <p>Requires health care providers who are aware of a non-adherent tuberculosis patient to contact the local health officer for necessary interventions.</p> <p>Establishes procedures for involuntary commitment of non-adherent tuberculosis patients.</p>				
Newborn Screening System	§ 64-91-9	This rule establishes the medical screening that must be performed on newborns in the state of WV and notes that the results must be kept	164.512 164.512(a),(b),(i)	No	Both	This section provides vague disclosure categories of "as required by law"

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		confidential. Disclosures may be made to reporting sources, persons who demonstrate a need for essential health research or treatment of the infant, or as required by law.				which can encompass multiple situations. However, these disclosures must be pursuant to HIPAA disclosure exemptions and relevant disclosure statutes.
Neonatal Abstinence Centers – Oversight Authority and Patient Rights	§ 69-9-4 § 69-9-7	Designates the Office of Health Facility Licensure and Certification as the oversight agency for licensing and inspection of neonatal abstinence centers. Requires centers to ensure that all alleged violations involving mistreatment, abuse, neglect, and misappropriation of property, including injuries of known and unknown origin are reported in accordance with State law and to the OHFLAC. Acknowledges parents' and/or legal representatives' right to be informed of the patient's medical condition, care and treatment. Provides for the confidentiality of each patient's personal and medical records and requires the center to provide access to all of the patient's records to the patient and legal representative within 24 hours of such a request.	160.203(b), (c), (d) 164.512(a), (c), (d)	No	State Law	State law provides greater rights of access to PHI than HIPAA. The legal representative under state law is the same individual as the personal representative under HIPAA.
Chronic Pain	§ 69-8-5	Requires the Secretary or its	160.203 (c), (d)	No	Both	Rule requires patient

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Management Clinic Licensure – Inspections, Patient Rights, Records, Quality Assurance and Performance Improvement; Incident Reporting	§ 69-8-9 § 69-8-11 § 69-8-13 § 69-8-15	designee to conduct unannounced inspections of all pain management clinics, which shall include review of a comprehensive listing of total patients, identifiers of those receiving chronic pain treatment and other services, diagnosis for each patient, demographic information for each patient, and a list of medications administered, dispensed, or prescribed for each patient. Inspections may include interviews with staff and patients, review of clinical records, observation of service delivery, and review of facility documents, including patient records. Provides for patient rights regarding confidentiality; requires the clinic to maintain patient records in compliance with state and federal law, including HIPAA; requires the clinic to maintain quality assessment and performance improvement policies; and reporting of adverse events or incidents to the Office of Health Facility Licensure and Certification and other applicable state agencies within 24 hours.	164.506 164.512 (a), (b), (d)			information to be maintained in accordance with state and federal law, including HIPAA. 2020 updates modify licensing fee which takes effect June 1, 2020. 2019 updates modifies some definitions, applicability to certain facilities, and imposes the requirements of the WV Clearance for Access: Registry and Employment Screening Act under §16-49-1 et seq and §69-10-1 et seq.
Controlled Substances Monitoring Program	§ 15-8-1 et seq. § 15-6-1 et seq.	Establishes regulations pursuant to W.Va. Code §60A-9-1 et seq. The program requires prescription and patient information for Schedule II,	160.203(c) 164.512 (a), (b), (d), (e), (f), (g), (j)	No	State Law	2021 changes to § 15-8-1 et seq. now require reporting of Schedule V

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		III, and IV controlled substances and opioid antagonists to be reported within 24 hours to the database. The repository has a duty to maintain the security of the database, which is to be confidential. Exceptions to confidentiality include, but not limited to, monitoring by the Board of Pharmacy for abnormal practices, law enforcement investigating a specific individual, the Chief Medical Examiner, physicians prescribing such substances, Chief Medical Officers investigating death, investigations for licensing, those with valid court or administrative orders, and medical school deans and hospital executives to monitor their physician practices. Information released shall be related to a specific patient, individual, or entity under any investigation set forth except that physicians can request specific data for providing treatment.				<p>substances. Regulatory section related to drugs of concern has been repealed. Minor text changes.</p> <p>2018 changes establish definition for “drugs of concern,” requires reporting to be in American Society for Automation in Pharmacy format, and provides requirements for individuals other than the patient picking up substances covered under the program.</p> <p>2018 changes also expand ability of program to disclose information to specific entities for certain HIPAA exempted uses under §15-8-7.3.</p>
Board of Pharmacy – Disciplinary Procedures	§ 15-09-1 et seq.	This section allows for a committee to review pharmacy records in order to investigate disciplinary issues and to utilize evidence, as needed, in a	164.512(a),(b), (f)	No	HIPAA	2020 update modifies methods of filing a complaint, empowers the board to file a

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		disciplinary proceeding. Board of Pharmacy is empowered to issue subpoenas to gather necessary evidence.				complaint, and modifies complaint procedures. Board not required to automatically provide copies of complaint to subject of the complaint.
Medication Assisted Treatment – Opioid Treatment Programs	§ 69-11-1 et seq. § 69-11-7	Establishes regulations for Opioid Treatment Centers pursuant to W.Va. Code §16-5Y-1. The regulations set guidelines for licensing, oversight, facility standards, inspections, administration and staffing, required services, patient care requirements, and patient rights. Facilities require an annual inspection of records and physician practices by the Office of Health Facility Licensure and Certification. The rules require facilities to follow both state and federal law in regards to patient confidentiality. This rule requires compliance with the Controlled Substances Monitoring Program Database.	160.203(c) 164.506 164.508 164.512(a), (b), (c), (d) (e), (g), (h), (i), (j)	No	State Law	Rule requires patient information to be maintained in accordance with state and federal law, including HIPAA and 42 CFR Part 2.
Medication Assisted Treatment – Office Based Medication Treatment	§ 69-12-1 et seq. § 69-12-17.1.8	Establishes regulations for Office Based Medication Assisted Treatment for Opioids pursuant to W.Va. Code §16-5Y-1. The rule establishes the Bureau of Behavioral Health and Health Facilities as the state opioid treatment authority and	160.203(c) 164.506 164.508 164.512(a), (b),	No	State Law	2020 updates to licensing fee adjustment took effect on June 1, 2020. Rule requires patient

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		<p>the Office of Health Facility and Licensure and Certification as the agency with the power of oversight and investigation for the program. The rule establishes procedures for licensing, inspections, administrative and staffing requirements, patient rights, medication practices, required services, and treatment guidelines.</p> <p>This rule provides for oversight and inspection of records. The rule requires patient records to be confidentially maintained in compliance with state and federal law. The rule requires compliance with the Controlled Substances Monitoring Program.</p>	(c), (d) (e), (g), (h), (i), (j)			<p>information to be maintained in accordance with state and federal law, including HIPAA and 42 CFR Part 2.</p> <p>2019 update modifies the requirements for new counselor training, modifies operation requirements to comply with WV Code §61-5Y-5(e), modifies recordkeeping requirements, and eliminates the section on risk assessment and orientation. There are text changes to reflect the repealed sections and reorganization of some sections. Other changes for operations are noted, but patient record security procedures are unchanged.</p>
Development of Methodologies to Examine	§ 69-13-1 et seq.	Establishes rules for systematic analysis for the relative needs for substance abuse treatment in the	164.512 (a), (b), (d)	No	State Law	2018 update creates a new region (Region 7 - Clay, Fayette,

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Need for Substance Use Disorder Treatment Facilities within the State		state. Describes data collection abilities and duties for the Bureau for Behavioral Health and Health Facilities. Data is to be used to determine areas of state with greatest need for substance abuse resources.				Kanawha, Nicholas, and Roane) for assessment. Removes references to "Strategic Plan" required by WV Code §16-5T-2(c)(1).
Collection and Exchange of Data Related to Overdoses	§ 69-14-1 et seq.	Requires mandatory reporter who treats, or is requested to treat, an overdose to report the incident in accordance with confidentiality standards. Requires minimum amount of protected health information be disclosed for reporting standards.	164.512(a), (b)	No	State Law	2020 update requires reporting of overdoses within 72 hours of provider response and specifies additional information required in report. Reporting methods are no longer specifically enumerated, but must be appropriate technology platforms with secure access. Additional changes to code definitions and organization. 2019 changes and emergency rule expanded the list of entities that would receive overdose information and increase the scope of mandatory reporters. Records are now

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						required to be electronic and there is now a mandated 72-hour reporting time. There are now requirements that the transfer of information be done through an appropriately secure method.
Licensure and Practice of Pharmacy	§ 15-1-1 et seq.	<p>Generally provides rules and regulations for the licensing and practice of pharmacy in WV. Provides for inspection and investigation powers, confidentiality of patient records, and limited telepharmacy practice. Requires HIPAA compliance.</p> <p>2021 update prohibits pharmacists from disclosing patient information with exceptions for :1) Members of the Board in official capacity; 2) another pharmacist or pharmacy technician when necessary; 3) the patient or their representative; 4) other medical providers treating the patient; and 5) any person authorized by law to receive the information.</p>	<p>160.203</p> <p>164.506</p> <p>164.512</p>	No	Both	<p>2021 changes remove specific confidentiality language and now simply require HIPAA compliance. Pharmacies now required to provide means for preventing disclosures of PHI.</p> <p>2020 updates allow for pharmacists to dispense limited supply of life-sustaining medication and sets forth record keeping and notice requirements.</p> <p>2019 updates modifies the requirements for after-hours</p>

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						medication dispensation for telepharmacy. Updates also remove sections to the newly created CSR §15-15-1 et seq and CSR §15-16-1 et seq, which govern pharmacy and pharmacist licensing.
Board of Medicine Rules for Dispensing of Prescription Drugs by Practitioners	§ 11-5-1 et seq.	The rules provide for certain practice guidelines and record keeping requirements for dispensing controlled substances. Practitioners are also required to comply with the Controlled Substance Monitoring Program. Allows for inspections of prescription records for complaints, suspected noncompliance, and by appropriate state or federal officials.	164.512(a),(b), (f)	No	State Law	This rule only applies to controlled substances, not general prescription medications.
Confidentiality of Physician Disciplinary Proceedings	§ 11-1A-11	Documents, records, files, and other information gathered in the process of the WV Board of Medicine investigating a complaint are confidential. These records may be disclosed in accordance with a law enforcement investigation, and the entity that receives these records must keep them confidential, except as necessary to further the investigation.	164.512(a),(f)	No	State Law	If the Board finds probable cause to institute disciplinary charges against a licensee, he or she shall be entitled to receive disclosures of information contained within the complaint file as set forth in W.Va. Code § 30-3-

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Regulation of Mixed Martial Arts	§ 177-2-1 et seq.	Generally establishes rules for Mixed Martial Arts events. Regulates necessary licenses, permits, insurance, and rules for bouts. Regulations require a pre-fight medical inspection and certification by a duly licensed physician approved by the Commission. Licensed MMA Fighters must submit evidence that they are free of HIV, Hepatitis B, and Hepatitis C. Regulations also prohibit the use of controlled substances without a prescription, and the Commission may order a drug test for such substances.	164.512(a), (b)	No	State Law	14(i). 2018 updates requires fighters be given medical inspections prior to and after bouts at a minimum.
Pilot Program for Drug Screening of Applicants for Cash Assistance	§ 78-26-8	The program requires applicants for the Temporary Assistance for Needy Families program (TANF) to answer a drug use questionnaire and take drug tests upon reasonable suspicion. Positive drug tests result in entrance into a treatment program as precondition for benefits. Rules state that results of drug screens shall be confidential and not shared, except as otherwise authorized. Positive tests can be addressed through treatment programs.	164.512(a), (e)	No	State Law	Pilot program extended to October 23, 2021. No changes to confidentiality provision. Regulation suspended due to COVID-19 State of Emergency.
Uniform Controlled Substances Act	§ 15-2-1 et seq.	The rules generally deal with the registration, control, manufacture and distribution of controlled substances within the state. The	164.512(a), (b), (d), (e)	No	State Law	2021 changes add Schedule V drugs to prescription refilling provisions.

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		regulations specify recordkeeping requirements for different schedules of controlled substances. Information relating to schedule I and II drugs are required to be maintained separately from all other records of the pharmacy.				Emergency Rule in effect to mirror DEA changes due to COVID.
Immunizations Administered By Pharmacists and Pharmacy Interns	§ 15-12-7	This section requires that patient records be kept for immunizations by pharmacists and forwarded to the patient's primary care physician, if applicable, and the West Virginia Immunization Information database. Requires parental consent for influenza or HPV immunization for minors. Requires adverse events to be reported to national and state health agencies as well as primary physicians.	164.512(b), (d)	No	State Law	2021 changes permit pharmacists or pharmacy interns to administer immunizations in accordance with treatment guidelines for immunizations issued by the CDC. No changes to record keeping requirements.
Centralized Prescription Processing	§ 15-14-3	These are rules to create standards for the fulfillment of prescription drugs in the state. This requires that there be an adequate system to secure confidential patient records and that the pharmacy is responsible for maintaining and storing prescription, prescription fulfillment, drug tracking, and receipt information. This information must be provided within 72 hours of any request by the Board or its designees.	164.512(b), (d)	No	State Law	2020 update excludes ability of pharmacy to outsource Schedule II controlled substances listed in WV Code §60A-2-206.
Registered Nurses	§ 19-9-4	This section provides a complaint procedure for registered nurses. The	164.512(a), (b), (d), (e)	No	State Law	Updates in late 2018 expands on the

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Disciplinary Actions		code states that the Board may review patient records during an investigation, but must redact any identifying information that is to be introduced into evidence at any disciplinary hearing.				complaint and investigation process. These updates do not change the requirements to remove identifying information prior to introducing evidence at a disciplinary hearing.
Insurance Commissioner – AIDS Regulations	§ 114-27-5	Regulations establish standards for AIDS testing as it relates to insurance policies. Testing results, and the occurrence of testing, are to be kept confidential. Also imposes pre-test requirements on informed consent. The regulations also cite appropriate circumstances for disclosure and requirements for removing personally identifiable information from such disclosures to certain entities. Allows for disclosures for testing payment and entitled government agencies.	164.502(d) 164.506 164.512(a)	No	State	
Osteopathic Physician Assistants	§ 24-02-1 et seq.	This rule establishes rules for the licensure, regulation, and discipline of an osteopathic physician assistant. The regulation authorizes examinations of medical records for compliance audits. Disciplinary procedures are to be held in accordance with cited provisions of state code and regulations articulated in §24-2-20.1.	160.203 164.512(a), (d), (e)	No	State	The Board has suspended certain licensure requirements in order to maximize the number of medical providers available for the COVID-19 crisis.

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Pharmacy Record Keeping and Automated Data Processing Systems	§ 15-4-1	This regulation establishes and articulates standards for pharmacy data processing, data confidentiality standards and practices, and reporting. Pharmacies must keep records of prescription drug dispensing for 5 years and the least year of dispensing records must be immediately accessible. Data on prescriptions beyond 1 year but less than 5 must be reported to proper authorities within 72 hours of a request. The regulation provides for proper standards for data storage and articulates specific standards for controlled substances. Data on dispensing a controlled substance must be retrievable within 72 hours. Requires auxiliary record system for controlled substances in the event that the main record system is down. Provides provisions for record maintenance, security, and disclosure to Pharmacy Board.	160.203 164.506 164.512(a),(b), (d), (e), (f)	No	State	Disclosure provision to Board of Pharmacy is limited to Board's authority under WV Statute and Regulation.
Medical Cannabis Act	§ 64-109-1 et seq § 64-110-1 et seq § 64-111-1 et seq § 64-112-1 et seq § 64-113-1 et	General provisions are contained within §64-109 and contain record requirements in §64-109-3 and -8. Regulations for Growers and Processors are contained in §64-110, Laboratories in §64-111, and Dispensaries in §64-112. §64-113 is a Safe Harbor Letter which outlines the requirements for individuals with	160.203(d) 164.506(c) 164.512(a), (b), (d), (e), (f)	No	State	

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	seq	<p>qualifying conditions to utilize medical cannabis from outside the state of West Virginia.</p> <p>These regulations generally implement the requirements for security, confidentiality, law enforcement access, inventory reporting, and oversight which are required under the statute.</p> <p>The regulations on medical cannabis include enumerations of data available under a FOIA request, what information is to be kept confidential, provisions on inventory tracking and reporting, investigations, maintenance of patient records and confidentiality, and confidential portions of the application process for the various stages of production and patient acquisition of medical cannabis.</p>				
Hospital Licensure	§ 64-12-1 et seq. § 64-12-7.2 § 64-12-10.1.3	Rules relating to the licensure of hospitals requires that requires appropriate information systems, measures to protect patient record confidentiality. This requires that medical records only be disseminated in accordance with federal and state law or an appropriate Court Order. Also requires that facilities maintain a waiting area which maintains patient	164.506 164.508 164.512(a), (b), (d), (e)	No	Both	2021 changes require a medical record storage system be created and that development of the system occur under a qualified person pursuant to hospital policy. Permits statutory compliance with state public

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		confidentiality. Requires disclosure only occur in accordance with state and federal law, or court order.				health reporting laws and clarifies responsible agency as DHHR. Other changes to definitions, requirements, and code reorganization.
Nursing Home Licensure	§ 64-13-1 et seq. § 64-13-4.4 § 64-13-12.2 § 64-13-14.2.10	Requires that all personnel receive training on maintaining confidentiality of resident information. Requires that nursing homes maintain confidentiality of records, except for transfers to other health care providers and facilitating payments. Requires that patients may access all records within 24 hours of a request.	164.506 164.508 164.512(a)	No	Both	HIPAA more stringent on patient access to medical records in cases of psychiatric notes.
Lead Abatement Licensing	§ 64-45-1 et seq. § 64-45-13	Requires that any person, contractor, or laboratory which discovers medically confirmed elevated blood levels of lead must notify the commissioner of the DHHR of these results within 36 hours.	164.512(b)	No	HIPAA	
State Run Mental Health Facilities – Patient Bill of Rights	§ 64-59-11	Provides for the confidentiality of patient information and records for residents of state run mental health facilities. Identifies the circumstances for disclosure. Provides right of access to medical records in a “clinically responsible manner” to patients. Requires that	164.506 164.512(a), (d), (e), (j)	No	State	

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		investigations into complaints be done in a manner which protects confidentiality.				
Mental Health Parity	§ 114-64-9	Information obtained by the insurance commissioner from an insurer or carrier is to be kept confidential. Materials are not subject to public inspection, subpoena, discovery proceedings, and are not admissible in a civil or criminal proceeding. The commissioner may use the information for investigations, regulatory or legal actions which are part of the duties of the commissioner, and to share information with other state or federal regulatory authorities pursuant to W.Va. Code §33-2-19. This provision of code requires that the recipient of this information agree to maintain confidentiality.	164.512(a), (d), (e), (f)	No	Both	Due to generalized nature of instances where disclosures are permissible, agencies should check to ensure compliance with HIPAA exceptions based upon the underlying purpose for the disclosure of the information.
Licensing Requirements for Residential and Treatment Facilities for Vulnerable and Transitioning Youth Group Homes and Programs	§ 78-3-1 et seq. § 78-3-5.5	This rule establishes standards and procedures for the licensure of residential child-care and treatment facilities and vulnerable and transitioning youth group homes and programs. Requires that identifying information of a child in a complaint be kept confidential. Requires compliance with state and federal confidentiality laws. Requires organizations have clear procedures on disclosure of information.	164.506 164.508 164.512	No	Both	Regulation requires compliance with both state and federal confidentiality laws.

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		Provides for right of access to case records to the extent provided by state and federal law. Requires procedures for record disposal. Requires that organizations ensure any contractors comply with confidentiality standards. Requires confidentiality training for individuals working with the organization. Requires adequate policies for securing records and limiting access.				
Physical Therapist and Physical Therapist Assistants	§ 16-1-12.7	Requires a provider utilizing telehealth services that the patient's medical information is confidential, and that providers must comply with HIPAA and other federal and state law for confidentiality.	164.506 164.508 164.512	No	Both	
Athletic Trainers	§ 16-5-13.7	Requires a provider utilizing telehealth services that the patient's medical information is confidential, and that providers must comply with HIPAA and other federal and state law for confidentiality.	164.506 164.508 164.512	No	Both	

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